

**STATE OF INDIANA
DEPARTMENT OF STATE REVENUE**

IN REGARDS TO THE MATTER OF:

**AMVETS POST NO. 332
DOCKET NO. 29-2003-0426**

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND PROPOSED ORDER**

An administrative hearing was held on Tuesday, December 16, 2003 in the office of the Indiana Department of State Revenue, 100 N. Senate Avenue, Room N248, Indianapolis, Indiana 46204 before Bruce R. Kolb, Administrative Law Judge acting on behalf of and under the authority of the Commissioner of the Indiana Department of State Revenue.

Petitioner, AMVETS #332, was represented by John T. Wilson, Attorney at Law, 403 W. 8th Street, Anderson, Indiana 46016. Steve Carpenter appeared on behalf of the Indiana Department of State Revenue.

A hearing was conducted pursuant to IC 4-32-8-5, evidence was submitted, and testimony given. The Department maintains a record of the proceedings. Being duly advised and having considered the entire record, the Administrative Law Judge makes the following Findings of Fact, Conclusions of Law and Proposed Order.

REASON FOR HEARING

On October 20, 2003, the Petitioner's application to conduct charity gaming was denied. The Petitioner protested in a timely manner.

FINDINGS OF FACTS

- 1) Petitioner submitted a CG-1 (Indiana Department of Revenue Charity Gaming Qualification Application) dated August 8, 2003 to the Indiana Department of Revenue. (Department's Exhibit B).
- 2) Petitioner's CG-1 was received by the Compliance Division of the Indiana Department of Revenue on August 8, 2003. (Department's Exhibit B).
- 3) On September 1, 2003 Petitioner received notice that it had been approved as a qualified organization. (Department's Exhibit B).
- 4) Petitioner's CG-1 was signed by its Post Commander Rich Ulrey and Harold Barkdull its Treasurer. Above their signatures is a certification which states, "We certify under penalty of perjury that the organization applying is a qualified organization and that there is no misrepresentation or falsification in the information stated. We certify that to the best of our knowledge the operators of the charity gaming events have not been convicted of any felonies. We understand that false or misleading statements will be cause for

rejection of this application or revocation of future licenses.” (Department’s Exhibit B).

- 5) Lori Broadwater is listed on Petitioner’s CG-1 as a proposed operator of Petitioner’s charity gaming events and a member of Petitioner’s organization. Ms. Broadwater was listed as having been an active member for two (2) years. (Department’s Exhibit B).
- 6) Wendy Jones is listed on Petitioner’s CG-1 as a proposed operator of Petitioner’s charity gaming events and a member of Petitioner’s organization. Ms Jones was listed as having been an active member for one (1) year. (Department’s Exhibit B).
- 7) Petitioner submitted a CG-2 (Indiana Department of Revenue Annual Bingo and/or Pull Tab Application) dated September 4, 2003 to the Indiana Department of Revenue. (Department’s Exhibit A).
- 8) Petitioner’s CG-2 was received by the Compliance Division of the Indiana Department of Revenue on September 5, 2003. (Department’s Exhibit A).
- 9) Petitioner’s CG-2 was signed by its Post Commander Rich Ulrey and Harold Barkdull its Treasurer. Above their signatures is a certification which states, “We certify under penalty of perjury that the organization applying is a qualified organization, and that there are no misrepresentation or falsification in the information stated. We understand that false or misleading statements will cause rejection of this application or revocation of future license(s).” (Department’s Exhibit A).
- 10) Lori Broadwater is listed on Petitioner’s CG-2 as a bingo operator who will supervise, manage, and be responsible for the operation and conduct of the gaming event. Ms. Broadwater was listed not only as a member of Petitioner’s organization but also an active member for two (2) years. (Department’s Exhibit A).
- 11) Wendy Jones is listed on Petitioner’s CG-2 as a bingo operator who will supervise, manage, and be responsible for the operation and conduct of the gaming event. Ms. Jones was listed as a not only as a member of Petitioner’s organization but also an active member for one (1) year. (Department’s Exhibit A).
- 12) Line 9 on Department Form CG-2 states, “Is any tangible personal property (i.e. tables, chairs, bingo blowers, etc.) being leased or donated to you for this event.” Petitioner answered “Yes.” (Department’s Exhibit A).
- 13) Line 9 continues, “If you answered yes, list the name and address of the lessor or donor. Attach a signed copy of the lease agreement or donation statement from the donor.” Petitioner listed only ARC Promotions (Department’s Exhibit A).
- 14) Line 10 on Department Form CG-2 states, “Does your organization own bingo equipment?” Petitioner answered “No.” (Department’s Exhibit A).
- 15) The Indiana Department of Revenue Criminal Investigation Division conducted an investigation of the Petitioner on September 19, 2003. (Record at 7).

- 16) A check of the membership department of the National AMVETS organization indicated that no record of membership for Lori Broadwater and Wendy Jones existed. (Record at 12).
- 17) A review of Petitioner's Auxiliary dues remittance form dated July 15, 2002 shows Lori Broadwater and Wendy Jones as new members. (Department's Exhibit C).
- 18) The Petitioner conducted two (2) raffles without obtaining a raffle license. (Record at 14-15).
- 19) According to Department's Exhibit C both raffle events, if held after Petitioner's qualification date of September 1, 2003, could have qualified for the single event exclusion as the value of the prizes awarded was less than \$1,000. Nevertheless, a qualified organization is still required to send the Department written notice of the planned event (See IC 4-32-9-3).
- 20) ARC Promotions is not licensed as either a manufacturer or distributor to sell, distribute, or manufacture bingo equipment. (Record at 16-17).
- 21) The Department then notified Petitioner by letter that its Indiana Charity Gaming License application was denied. (Department's Exhibit D).
- 22) According to the Department's letter dated October 20, 2003, the Petitioner's application to conduct charity gaming was denied (Record at 17).
- 23) The Petitioner contends that there are sufficient members that would qualify as operators or workers. (Record at 24).
- 24) Petitioner stated that they had not purchased any equipment from ARC Promotions and they have made arrangements with Lancaster Bingo a licensed distributor. (Record at 24-25).
- 25) Petitioner argues that the only reason they listed ARC Promotions on its application is that the equipment already in place at the location to be used for gaming purposes belongs to ARC Promotions. (Record at 25).
- 26) In reviewing Petitioner's CG-2, there was no signed copy of the lease agreement or donation statement from the donor concerning the tangible personal property to be used by the Petitioner in conducting its gaming operation. (Department's Exhibit A).
- 27) ARC Promotion's equipment was being used at the location Petitioner had chosen to run its gaming operation. (Record at 31).
- 28) An organization called Hoop Shooters had been using ARC Promotion's gaming equipment and had been conducting gaming operations in the location to be used by the Petitioner. (Record at 32).
- 29) The owners of ARC Promotions are Auxiliary and Sons members of Petitioner's organization. (Record at 32-33).
- 30) Petitioner admitted at hearing that they had two raffles and that they did not possess a license for either, and that they did not try to hide the raffles in any way. (Record at 26-27).
- 31) Petitioner asks that it be granted a license to conduct charity gaming, and be given an opportunity to amend its application that was denied by the department. (Record at 38).

STATEMENT OF LAW

- 1) Pursuant to 45 IAC 18-8-4, the burden of proving that the Department's findings are incorrect rests with the individual or organization against which the department's findings are made. The department's investigation establishes a prima facie presumption of the validity of the department's findings.
- 2) The Department's administrative hearings are conducted pursuant to IC § 4-21.5 et seq. (See, House Enrolled Act No. 1556).
- 3) "[B]ecause Pendelton's interest in his insurance license was a property interest, and not a liberty interest. Rather, a preponderance of the evidence would have been sufficient." Pendelton v. McCarty, 747 N.E. 2d 56, 65 (Ind. App. 2001).
- 4) "It is reasonable...to adopt a preponderance of the evidence standard where it can be demonstrated that a protected property interest exists." Burke v. City of Anderson, 612 N.E.2d 559, 565 (Ind.App. 1993).
- 5) IC 4-32-9-3 states, "(a) A qualified organization is not required to obtain a license from the department if the value of all prizes awarded at the bingo event, charity game night, raffle event, or door prize event, including prizes from pull tabs, punchboards, and tip boards, does not exceed one thousand dollars (\$1,000) for a single event and not more than three thousand dollars (\$3,000) during a calendar year.
 (b) A qualified organization described in subsection (a) that plans to hold a bingo event more than one (1) time a year shall send an annual written notice to the department informing the department of the following:
 - (1) The estimated frequency of the planned bingo events.
 - (2) The location or locations where the qualified organization plans to hold the bingo events.
 - (3) The estimated amount of revenue expected to be generated by each bingo event.
 (c) The notice required under subsection (b) must be filed before the earlier of the following:
 - (1) March 1 of each year.
 - (2) One (1) week before the qualified organization holds the first bingo event of the year.
 (d) A qualified organization described in subsection (a) shall maintain accurate records of all financial transactions of an event conducted under this section. The department may inspect records kept in compliance with this section."
- 6) IC 4-32-9-28 states, "An operator must be a member in good standing of the qualified organization that is conducting the allowable event for at least one (1) year at the time of the allowable event."
- 7) IC 4-32-7-4 provides, "The department has the sole authority to license entities under this article to sell, distribute, or manufacture the following:
 - (1) Bingo cards.
 - (2) Bingo boards.

- (3) Bingo sheets.
- (4) Bingo pads.
- (5) Any other supplies, devices, or equipment designed to be used in playing bingo designated by rule of the department.

- (6) Pull tabs.
- (7) Punchboards.
- (8) Tip boards.

(b) Qualified organizations must obtain the materials described in subsection (a) only from an entity licensed by the department.

(c) The department may not limit the number of qualified entities licensed under subsection (a).

- 8) IC 4-32-9-28 states, "An operator must be a member in good standing of the qualified organization that is conducting the allowable event for at least one (1) year at the time of the allowable event."

- 9) IC 4-32-12-1 provides in pertinent part, "The department may suspend or revoke the license of or levy a civil penalty against a qualified organization or an individual under this article for any of the following:

(1) Violation of a provision of this article or of a rule of the department.

(2) Failure to accurately account for:

- (A) bingo cards;
- (B) bingo boards;
- (C) bingo sheets;
- (D) bingo pads;
- (E) pull tabs;
- (F) punchboards; or
- (G) tip boards.

(3) Failure to accurately account for sales proceeds from an event or activity licensed or permitted under this article.

(4) Commission of a fraud, deceit, or misrepresentation.

(5) Conduct prejudicial to public confidence in the department.

(b) If a violation is of a continuing nature, the department may impose a civil penalty upon a licensee or an individual for each day the violation continues."

CONCLUSIONS OF LAW

- 1) On October 20, 2003, the Petitioner's application to conduct charity gaming was denied.
- 2) Petitioner appealed the denial in a timely manner.
- 3) The issue at hearing was whether the Department's denial was proper.
- 4) Petitioner's two raffles must have been held after Petitioner's qualification date of September 1, 2003, for the single event exclusion in IC 4-32-9-3 to apply.
- 5) Petitioner failed to inform the Department pursuant to IC 4-32-9-3 of its two raffles.

- 6) Petitioner listed two operators whose term of membership was in violation of IC 4-32-9-28.
- 7) Petitioner's officers signed the CG-1 and CG-2 stating that they understood that false statements on its application would cause the rejection of the application.
- 8) Petitioner's violation of Indiana charity gaming laws was sufficient to warrant a denial of its license application.

PROPOSED ORDER

Following due consideration of the entire record, the Administrative Law Judge orders the following:

The Petitioner's appeal is denied. However, Petitioner may correct/amend its application and resubmit it to the Department. If Petitioner chooses to amend its application for resubmission, the Department is directed to expedite its review.

- 1) Administrative review of this proposed decision may be obtained by filing, with the Commissioner of the Indiana Department of State Revenue, a written document identifying the basis for each objection within fifteen (15) days after service of this proposed decision. IC 4-21.5-3-29(d).
- 2) Judicial review of a final order may be sought under IC 4-21.5-5.

THIS PROPOSED ORDER SHALL BECOME THE FINAL ORDER OF THE INDIANA DEPARTMENT OF STATE REVENUE UNLESS OBJECTIONS ARE FILED WITHIN FIFTEEN (15) DAYS FROM THE DATE THE ORDER IS SERVED ON THE PETITIONER.

Dated: _____

Bruce R. Kolb / Administrative Law Judge